



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (June 2004)

(Implements RCW 34.05.310)

Do **NOT** use for expedited rule making

Agency: Department of Ecology AO# (08-07)

Subject of possible rule making: Ecology is proposing to revise certain portions of the Sediment Management Standards (Chapter 173-204 WAC). This rule defines the requirements for managing contaminated sediments in Washington. This rulemaking will include:

- Updates to the Sediment Management Standards (SMS) cleanup decision framework to address bioaccumulative chemicals which present risk to human health and the environment. This includes methods and policies for establishing risk-based cleanup standards, procedures for incorporating background concentrations, and requirements for sediment cleanup actions.
- Fish and shellfish consumption rates used to support cleanup decisions.
- Chemical and biological criteria to support cleanup decisions at freshwater sediment sites.
- Clarifying requirements for coordinating cleanup actions and source control measures to prevent recontamination.

Statutes authorizing the agency to adopt rules on this subject: The Model Toxics Control Act (Chapter 70.105D RCW) and the Water Pollution Control Act (Chapter 90.48 RCW).

Reasons why rules on this subject may be needed and what they might accomplish: The relationship between sediment contamination and risks to human health and the environment is better understood today than it was when this rule was adopted in 1991 and amended in 1995. Ecology has gained experience cleaning up contaminated sediments at sites where cleanup efforts are complicated by uncertainties about protecting human health, the timing and feasibility of source control, how to deal with background levels of contamination, and liability associated with historical releases. The current rule causes lengthy cleanup delays, inefficient use of available cleanup funds, and continued exposure to unhealthy levels of hazardous substances. Rule revisions are needed to speed up cleanup of contaminated sediments by providing clear, workable, and predictable requirements for sediment cleanup actions.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: Establishing sediment management requirements is a responsibility assigned to the Department of Ecology in Chapter 70.105D RCW and Chapter 90.48 RCW. Many tribal nations have lands or usual and accustomed fishing areas on or adjacent to cleanup sites and will be consulted during the rule-making process. The U.S. Environmental Protection Agency (EPA) is responsible for overseeing cleanup actions conducted under the federal Superfund program and for source control activities under the federal Clean Water Act. The Agency for Toxic Substances and Disease Registry (ATSDR) and the Washington Department of Health (DOH) are responsible for evaluating human health hazards. EPA and DOH are represented on Ecology's sediment cleanup rule advisory committee and will be consulted during the rule-making process. The U.S. Army Corps of Engineers and the Washington Department of Natural Resources are also responsible for specific sediment management activities. These agencies are represented on the committee.

Process for developing new rule (check all that apply):

- ☐ Negotiated rule making
- ☐ Pilot rule making
- ☐ Agency study
- ☒ Other (describe)

This rule-making will result in amendments to the Sediment Management Standards. Ecology plans on sharing information and working with tribes and stakeholders prior to a formal proposal. Once Ecology formally proposes rule amendments, people will have an opportunity to comment on the proposed rule. At least two public hearings will be held. The proposed amendments will be posted on the Ecology web site and links will be sent via email to those who have expressed interest. Hard copies will be available upon request.

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication: Ecology recognizes that public involvement is key to this rule-making effort and will provide opportunity to contribute in an informed and meaningful way. Background materials, options being considered, meeting announcements, comment periods, and contact information will be posted at www.ecy.wa.gov/programs/tcp/regs/2011-SMS/2011-SMS-hp.html For more information contact: Martha Hankins, Toxics Cleanup Program, Washington Department of Ecology; 360-407-6864 or email to martha.hankins@ecy.wa.gov.

DATE
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